

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 3, 2007

MARIO R. PERKINS v. CHERRY LINDAMOOD, WARDEN

**Direct Appeal from the Circuit Court for Wayne County
No. 14121 Stella Hargrove, Judge**

No. M2007-00698-CCA-R3-HC - Filed December 19, 2007

The petitioner, Mario R. Perkins, filed in the Wayne County Circuit Court a petition for a writ of habeas corpus, arguing that his convictions and sentences for second degree murder and aggravated robbery are illegal and void. The habeas corpus court dismissed the petition, finding that the petitioner did not make a valid claim of illegality and voidness. On appeal, the petitioner challenges this ruling. Upon our review of the record and the parties' briefs, we affirm the judgment of the habeas corpus court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JERRY L. SMITH and ALAN E. GLENN, JJ., joined.

Mario R. Perkins, Clifton, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and J. Ross Dyer, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

The petitioner was originally charged with first degree murder and aggravated robbery. However, pursuant to a plea agreement, the petitioner was convicted of second degree murder and aggravated robbery, respectively. The petitioner was sentenced as a Range III persistent offender to forty-five years for the second degree murder conviction, and he was sentenced as a Range I standard offender to eight years for the aggravated robbery conviction, with the sentences to be served concurrently. See Mario Perkins v. State, No. 02C01-9805-CR-00127, 1999 WL 412720, at *1 (Tenn. Crim. App. at Jackson, June 18, 1999).

Thereafter, the petitioner filed a petition for a writ of habeas corpus, alleging that his judgments of conviction were void. Specifically, the petitioner argued that the juvenile court failed to enter an order setting out the required statutory findings for his transfer to the criminal court; therefore, the criminal court did not have jurisdiction to try the petitioner. Next, the petitioner contended that he could not be sentenced as a Range III persistent offender because he did not have the requisite criminal history. Finally, the petitioner alleged that the trial court erred when it amended his judgment of conviction for second degree murder to reflect that he was to serve one hundred percent of the sentence in confinement, not forty-five percent as was noted on the original judgment of conviction. The petitioner maintained that “[a]t no time did [he] agree to a sentence of forty-five years at one hundred percent.”

The State filed a motion to dismiss the petition, arguing that the petitioner waived his right to challenge his transfer from juvenile court because the issue should have been raised at the time of his transfer to criminal court. Additionally, the State, citing Sawyers v. State, 814 S.W.2d 725 (Tenn. 1991), asserted that the absence of a transfer order did not affect the criminal court’s jurisdiction. In response to the petitioner’s second claim, that he did not qualify as a Range III persistent offender, the State noted that the petitioner’s sentence was the result of a negotiated plea agreement and that offender classification and release eligibility are legitimate bargaining tools. Finally, the State concluded that if the petitioner’s allegation that he was sentenced as a Range III persistent offender is correct, the petitioner’s sentence was indeed illegal. However, the State maintained that when the trial court amended the judgment, it was merely correcting a clerical error in the original judgment. Thus, the petitioner failed to show that his sentences had expired or that the judgments were void.

After reviewing the petition and the State’s motion to dismiss, the habeas corpus court granted the State’s motion and dismissed the petition. On appeal, the petitioner argues that “the corrective process afforded to him during his Habeas Corpus process[] was so deficient so as to render futile any effort to obtain relief.” He also argues that the original judgment of conviction for second degree murder reflected that he was sentenced to forty-five years at forty-five percent. He contends that this sentence is illegal and that the trial court had no jurisdiction to correct the judgment.

II. Analysis

Initially, we note that the determination of whether to grant habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007). As such, we will review the trial court’s findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner’s burden to demonstrate, by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, § 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). However, “[s]uch relief is available only when it appears from the face of the judgment or the record of the proceedings that

a trial court was without jurisdiction to sentence a defendant or that a defendant's sentence of imprisonment or other restraint has expired." Wyatt, 24 S.W.3d at 322; see also Tenn. Code Ann. § 29-21-101 (2000). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 995 S.W.2d at 83).

The petitioner's first contention is essentially that the habeas corpus court dismissed his petition without allowing him to respond to the State's motion to dismiss. The record reflects that on January 9, 2007, the petitioner filed his petition for a writ of habeas corpus which was accompanied by a memorandum of law. On February 14, 2007, the State filed a motion to dismiss which was also accompanied by a memorandum of law. The motion to dismiss addressed all of the issues raised in the petition. On February 23, 2007, the petitioner filed a motion opposing the State's motion to dismiss. On March 1, 2007, the habeas corpus court filed an order dismissing the petition, noting that it considered the motions filed by the parties. Therefore, the record does not support the petitioner's arguments. This issue is without merit.

We note that the petitioner first challenged his sentence for second degree murder in a post-conviction petition. On appeal, this court stated that the record clearly reflected that the petitioner agreed to a sentence of forty-five years with required service of a minimum eighty-five percent of his sentence, provided the appellant earned the requisite good time credits. Mario Perkins v. State, No. 02C01-9805-CR-00127, 1999 WL 412720, at **3-4 (Tenn. Crim. App. at Jackson, June 18, 1999). We further note that the petitioner's original judgment of conviction for second degree murder reflected that the petitioner was sentenced to serve forty-five percent of his sentence in confinement, in contravention of Tennessee Code Annotated section 40-35-501(i)(2)(B) which mandates service of one hundred percent of the sentence in confinement. That sentence would have been illegal. However, the petitioner's judgment of conviction, as corrected, shows no illegality on its face as it reflects that the petitioner must serve one hundred percent of his sentence in confinement. The trial court acted within its authority in correcting the judgment. See Tenn. R. Crim. P. 36 (providing that "[c]lerical mistakes in judgments . . . may be corrected by the court at any time").

III. Conclusion

Based upon the foregoing, we affirm the judgment of the habeas corpus court.

NORMA McGEE OGLE, JUDGE